

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JENNIFER ECKHART,

Plaintiff,

v.

FOX NEWS NETWORK, LLC, and ED HENRY, in his
individual and professional capacities,

Defendants.

Case No. 20-CV-5593 (RA)

**DECLARATION OF CATHERINE M. FOTI IN SUPPORT OF DEFENDANT
ED HENRY'S MOTION TO DISMISS PLAINTIFF'S THIRD AMENDED COMPLAINT,
MOTION TO STRIKE, MOTION FOR SANCTIONS,
AND MOTION FOR A MORE DEFINITE STATEMENT**

CATHERINE M. FOTI, declares, pursuant to 28 U.S.C. § 1746 and Local Civil Rule 1.9,
under penalty of perjury, the following to be true and correct:

1. I am a principal of the firm Morvillo Abramowitz Grand Iason & Anello P.C.,
counsel for Defendant Edward "Ed" Henry in the above-captioned action. I submit this
Declaration, along with the accompanying Memorandum of Law in support of Mr. Henry's
Motion to Dismiss Plaintiff Jennifer Eckhart's Third Amended Complaint, pursuant to FRCP
12(b)(6), his Motion to Strike, pursuant to FRCP 12(f)(2), his Motion for Sanctions pursuant to
the Court's inherent powers, and his Motion for a More Definite Statement, pursuant to FRCP
12(e). I am familiar with the facts and circumstances set forth herein.

2. Ed Henry is a television and print journalist. He started his broadcasting career as
a political analyst for a local Washington, D.C. radio station, WMAL, and quickly moved to
work for CNN where he began covering the White House in 2006. In 2011, Mr. Henry left CNN
to become the Chief White House Correspondent for Fox News. He became an occasional host

for *Fox and Friends Weekend* in 2016 and then a regular host of that show in 2016. In December, 2019, he became the co-host of *America's Newsroom*, a position he held until Fox News terminated him on July 1, 2020. Throughout his employment at Fox News, Mr. Henry worked in a separate division from Fox Business Network.

3. On December 18, 2013, Jennifer Eckhart commented on a tweet Mr. Henry had issued earlier in the day about a movie. Attached hereto as Exhibit A is a true and correct copy of public tweets from Ed Henry and Jennifer Eckhart, dated December 18, 2013. Prior to December 18, 2013, Mr. Henry had never met Eckhart and did not know who she was. Only after Eckhart commented on his tweet did Mr. Henry learn that Eckhart worked for Fox Business and begin following Eckhart on Twitter.

4. Attached hereto as Exhibit B is a true and correct copy of email correspondence between Ed Henry and Jennifer Eckhart, dated December 18, 2013, regarding the exchange of tweets referenced in paragraph 3 above. This email was sent from Mr. Henry's Fox News email account, to which Mr. Henry no longer has access. Mr. Henry, however, does have a hardcopy printout of that email exchange. Exhibit B is a true and correct copy of this printout.

5. According to the Third Amended Complaint, one day when Mr. Henry was in Fox News' New York office, he asked Eckhart to take a picture with him. See TAC ¶ 40. Although Mr. Henry disagrees with the sequence of events leading up to the picture he took with Eckhart, he agrees that they did take a picture and recalls that Eckhart then posted it publicly on Twitter.

6. Attached hereto as Exhibit C is a true and correct copy of email correspondence between Ed Henry and Jennifer Eckhart, dated June 13, 2014, regarding the exchange of the picture referenced in paragraph 5 above. This email also was sent from Mr. Henry's Fox News email account, to which he no longer has access. Exhibit C is a true and correct copy of a

printout of that email exchange.

7. Attached hereto as Exhibit D is a true and correct copy of email correspondence between Ed Henry and Jennifer Eckhart, dated October 21, 2015.

8. Attached hereto as Exhibit E is a true and correct copy of a message, dated January 2, 2016, from Jennifer Eckhart to Ed Henry sending him a “Playlist” of songs via Dropbox. Included in this “Playlist” are songs like “Coffee (Fucking)” (which features the lyrics “Fucking in the morning . . . I’ve never felt comfortable like this . . . Sweet dreams turn into fucking in the morning”) and “Cockiness (Love It When You Eat It)” (which features the lyrics “I want you to be my sex slave . . . Set my whole body on fire”).

9. Attached hereto as Exhibit F is a true and correct copy of email correspondence Jennifer Eckhart sent to Ed Henry, dated January 13, 2016, with a link to a picture of a man’s tattoo, as well as a screenshot from that webpage.

10. In connection with Mr. Henry’s motion to dismiss Plaintiff’s Second Amended Complaint, Mr. Henry filed photographs Jennifer Eckhart sent Mr. Henry in 2017. These photographs are not attached here but are available at Dkt. 85, Exhibits 7-21.

11. The Third Amended Complaint alleges that Mr. Henry had a sexual encounter with a woman named Roxie Marroquin and Eckhart suggests that Mr. Henry wrongfully sought to silence Ms. Marroquin after a sexual encounter. *See* TAC ¶¶ 140-48. In fact, Ms. Marroquin was actually investigated for attempting to extort Mr. Henry and visited by the FBI who warned her against continuing her extortionate conduct.

12. The Third Amended Complaint alleges that Mr. Henry “coerced” a woman, identified only as “Jane Doe 1,” into having sex with him. *See* TAC ¶ 157. Jane Doe 1 has publicly repudiated this allegation, making clear that her relationship with Mr. Henry was

completely consensual. *See* Diana Falzone, *The Sexual Assault Lawsuit Against Ed Henry Just Took a Wild Turn*, The Daily Beast (Nov. 15, 2020), <https://www.thedailybeast.com/the-sexual-assault-lawsuit-against-ex-fox-news-anchor-ed-henry-just-took-a-wild-turn>. Attached hereto as Exhibit G is a true and correct copy of this Daily Beast article. According to that article, Jane Doe 1 informed Eckhart's counsel, Michael Willemin, that the allegations concerning her relationship with Mr. Henry in the Third Amended Complaint and those concerning Jane Doe 3 (which apparently were repeated by Jane Doe 1 and not directly reported by Jane Doe 3) are false and asked him to withdraw those allegations. *See id.* Mr. Willemin apparently refused to do so. *See id.*

13. Based on the statements in the Daily Beast article, I emailed Mr. Willemin, on November 15, 2020, and asked him to withdraw the Third Amended Complaint because of the clear evidence that it contained false allegations and that Mr. Willemin knew these allegations to be false. Mr. Willemin refused my request.

14. The conduct outlined in paragraphs 12-13, along with other false and prejudicial allegations included in the Third Amended Complaint, is so egregious that sanctions are warranted.

Dated: New York, New York
December 7, 2020

/s/ Catherine M. Foti
CATHERINE M. FOTI